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## Regulator Stalls Blue Cross Deal in California

By REED ABELSON

**O**ne man is now left standing between the \$16.4 billion merger of two giant Blue Cross plans, [Anthem](#) and [WellPoint Health Networks](#).

The companies had announced their intentions to create the nation's largest health insurer last October when Anthem agreed to buy WellPoint. Since then, the Justice Department and various other states have approved the deal, as have the companies' shareholders.

But in a news conference held yesterday, John Garamendi, the commissioner for the California Department of Insurance, said he had denied the request to merge in what he described as his "final decision."

"This may have been an extraordinarily good deal for officers and directors," he said, referring to the lucrative executive pay packages that have drawn stinging criticism from him and others. "But this is one lousy, bad deal for policyholders and health care consumers in California."

Yesterday's decision does not necessarily scuttle the deal, because analysts say that Mr. Garamendi's office has jurisdiction over only a small fraction of the California operations of the two companies, which between them operate in a dozen other states. If the companies had no other recourse, analysts said, they could probably choose to spin off the pieces under Mr. Garamendi's purview.

But his decision prolongs the uncertainty over exactly when and how the merger could be completed, analysts said. Company officials, who had hoped to finish the deal by the middle of the year, accused Mr. Garamendi of political grandstanding and said they might take the matter to court.

"Sue me," Mr. Garamendi said in a telephone interview. "I want to take this to a judge."

The refusal by Mr. Garamendi, a Democrat who was a losing candidate in last year's gubernatorial election, came on the same day that another big regulator in the state, the Department of Managed Health Care, approved the merger. That department's director, Cindy Ehnes, is an appointee of the state's Republican governor, Arnold Schwarzenegger.

Mr. Garamendi denied that his decision was politically motivated. Anthem and WellPoint, which were pioneers in the move to convert Blue Cross plans around the country to for-profit companies, had spent months in intense negotiations with Mr. Garamendi and Ms. Ehnes to win their approval of the merger.

With California the one state remaining to approve the deal, Anthem and WellPoint ended up offering to spend nearly \$500 million in programs for the state's residents, including the poor, in coming years. They had also agreed to defer roughly \$100 million, about half, of the lucrative pay packages that executives were to receive in the deal.

Ms. Ehnes cited some of these concessions in giving her approval to the deal, which would transfer the ownership of the health plans of Blue Cross of California from WellPoint to Anthem. "We have negotiated a pact that is a good deal for consumers and sends a strong message that California is a state with a competitive and healthy marketplace where business is welcome," Ms. Ehnes said in a statement.

Company officials accused Mr. Garamendi of playing politics. In a joint statement released by the companies, the general counsel of WellPoint, Thomas C. Geiser, said, "Commissioner Garamendi's politically motivated decision is a clear abuse of discretion that cannot possibly benefit Californians."

While both companies emphasized that they remained committed to pursuing the deal, the next steps remain unclear. "We're going to take a look at all our possible courses of action," said Deborah New, a spokeswoman for Anthem.

The companies also said they would consider some sort of legal action, arguing that Mr. Garamendi had overstepped his authority. Mr. Garamendi oversees traditional insurance plans, which the company said accounted for less than 4 percent of the combined entity's overall revenues. The bulk of both companies' business in California is in offering managed care plans to employers.

"This is a case of the tail wagging the dog - for political reasons," David C. Colby, the chief financial officer for WellPoint, said in a statement.

But Mr. Garamendi denied he was motivated by politics, saying he was not planning to run again for governor, and arguing that it was within his office's power to oppose the deal. "The law gives me the authority to judge a merger," he said.

At least one advocacy group, the Foundation for Taxpayer and Consumer Rights, which has been a vocal critic of the plan, praised his decision. The deal had been roundly criticized for the generous pay packages given to the executives involved and for the \$3.4 billion in debt that would be incurred to help pay for it.

"Policyholders will pay for this debt," Mr. Garamendi said.

Despite Mr. Garamendi's objection, analysts predicted that the deal would be completed. "Both companies have a lot of time and effort vested in this deal and we expect that they will do everything possible to see it through to completion," said Doug Simpson, an analyst with [Merrill Lynch](#), in a note to investors before Mr. Garamendi made his opposition official.

Other analysts agreed. "It will ultimately close," said Thomas A. Carroll, an analyst for Legg Mason Wood Walker, who said the two companies could spin off the insurance business that was under Mr. Garamendi's oversight, if necessary.

Even Mr. Garamendi seemed to concede he might not be able to stop the deal. When asked at the news conference if he had the power to block the deal, he replied, "The board of directors of the two companies would have to answer that question." But he added that the directors did not have regulatory authority.

If the deal goes through, the new company, to be named WellPoint, will serve some 28 million members in 13 states. Its headquarters will be in Indianapolis, where Anthem is currently based. WellPoint is currently based in Thousand Oaks, Calif.

Trading of shares in WellPoint and Anthem was halted early yesterday in anticipation of Mr. Garamendi's decision, which was announced after the stock market had closed. Before the trading halted, Anthem's shares fell \$1.20 to \$88.80, while WellPoint slipped \$1.92 to \$109.78.

*Carolyn Marshall, in San Francisco, contributed reporting for this article.*